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IN THE COURT OF APPEALS OF INDIANA

A.A.R., Jr.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 82A04-0804-JV-223
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
Cause No. 82D01-0710-JD-442

January 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent A.A.R., Jr., appeals his adjudication as a juvenile delinquent for

having committed what would have been Attempted Battery with a Deadly Weapon,[1] a class B felony, if committed by an adult. Specifically, A.A.R., Jr., challenges the sufficiency of the evidence supporting the trial court's delinquency finding. Finding no error, we affirm the judgment of the trial court.

FACTS

On October 13, 2007, Kelly and Misty Casteel picked up their three children, H.C., D.C., and K.C., and a friend, K.M., from a skating rink and brought them to their home in Evansville. Upon their arrival, K.C. exited his parents' vehicle and went to the front of their apartment building, where he saw three juvenile males taking a bicycle. K.C. ran back to the vehicle and told his father, Kelly, what was happening. Everyone followed K.C. and Kelly around to the front of the building, where they confronted the three males who were taking the bicycle.

Kelly asked the three males what they were doing, and they responded that they were stealing the bicycle. At that point, A.A.R., Jr., drew a gun, aimed it at Kelly, and fired. Kelly was not struck; however, he could "hear" and "feel" the bullet go past him. Tr. p. 67.

H.C., K.M., and Tom Jeffreys saw A.A.R., Jr., shoot at Kelly and identified him to the police. Although it was dark outside, H.C. could see which of the three males had shot at her father because of the light provided by a nearby lamp post. Jeffreys was able to identify A.A.R., Jr., as the shooter because he was only about fifteen or twenty feet away.

During the investigation, Evansville Police Detective Brad Evrard learned from J.F.,

[1] Ind. Code § 35-42-2-1.5.

one of the three males who were stealing the bicycle, that A.A.R., Jr., was the shooter. Detective Jeff Vantlin showed H.C., K.M., and Jeffreys a photo array, and all three identified A.A.R., Jr., as the shooter. In addition, H.C. and Jeffreys told Detective Vantlin that the shooter had a ponytail, and according to Detective Evrard, the other two males did not have a ponytail or hair long enough to make one.

On October 25, 2007, the State filed a delinquency petition charging A.A.R., Jr., with Count I, attempted murder, a class A felony, and Count II, burglary, a class B felony.[2] The first half of A.A.R., Jr.'s, attempted murder adjudication commenced on February 29, 2008, and the second half commenced on May 8, 2008. On May 9, 2008, the trial court determined that A.A.R., Jr., had committed the lesser included delinquent offense of attempted battery with a deadly weapon, a class B felony, and he was committed to the Department of Correction. A.A.R., Jr., now appeals.

DISCUSSION AND DECISION

A.A.R., Jr., argues that the State failed to prove beyond a reasonable doubt that he was a juvenile delinquent for having committed the offense of attempted battery with a deadly weapon had it been committed by an adult. Specifically, A.A.R., Jr., claims that the evidence failed to establish that he was the shooter. When reviewing a delinquency adjudication, appellate courts will only consider the evidence and reasonable inferences supporting the

[2] The trial court held separate adjudications on each count and ordered separate appeals on each. Both counts are contained in the record from the same lower court cause number, but have been assigned separate appellate cause numbers pursuant to an Order from this court dated September 12, 2008, which severed the two counts for appeal purposes. Count II has been assigned appellate cause number 82A01-0809-JV-424, and we hand down that appeal contemporaneously with this one.

judgment. B.R. v. State, 823 N.E.2d 301, 306 (Ind. Ct. App. 2005). We will neither reweigh the evidence nor judge the witnesses' credibility. Id. If there is substantial evidence of probative value from which a reasonable trier of fact could conclude beyond a reasonable doubt that the juvenile committed the delinquent act, we will affirm the adjudication. Id.

When the State seeks to have a juvenile adjudicated as a delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of the crime beyond a reasonable doubt. G.R. v. State, 893 N.E.2d 774, 776 (Ind. Ct. App. 2008). Indiana Code section 35-42-2-1.5 defines aggravated battery as follows:

> A person who knowingly or intentionally inflicts injury on a person that creates a substantial risk of death or causes:
>
> (1) serious permanent disfigurement;
> (2) protracted loss or impairment of the function of a bodily member or organ; or
> (3) the loss of a fetus
>
> commits aggravated battery, a Class B felony.

A.A.R., Jr., argues that there are two versions of the events of October 13, 2007, and that the trial court unreasonably believed the version in which A.A.R., Jr., was the shooter. When a trial court accepts one version of a story over a conflicting version, the decision must be reasonable, and an arbitrary decision does not comport with the requirement that guilt be proven beyond a reasonable doubt. Simpson v. Simpson, 165 Ind. App. 619, 621-22, 333 N.E.2d 303, 304 (1975).

Here, K.M., H.C., and Jeffreys all identified A.A.R., Jr., as the shooter from a photo array. Furthermore, H.C. testified that she could see the shooter because of the light from a

nearby lamp post, and Jeffreys testified that he could see the shooter because he was only fifteen or twenty feet away when A.A.R., Jr., fired the gun. Moreover, H.C. and Jeffreys told Detective Vantlin that the shooter had a ponytail, and according to Detective Evrard, who had had contact with the other two males who were attempting to steal the bicycle, neither one had a pony tail nor did either of them have hair long enough to make one. Finally, J.F., one of the other two males, told Detective Evrard that A.A.R., Jr., had fired the gun. In light of this evidence, we cannot say that the trial court was unreasonable in accepting the version of events in which A.A.R., Jr., was the shooter.

Nevertheless, A.A.R., Jr., maintains that Kelly's failure to identify him as the shooter and his erroneous belief that four males were involved, coupled with J.F.'s recanted confession that he was the shooter, makes the trial court's determination arbitrary and unreasonable. We cannot agree. In accepting the version of events in which A.A.R., Jr., was the shooter, the trial court was performing its duty of determining the credibility of the witnesses. See Simpson, 165 Ind. App. at 622, 333 N.E.2d at 304 (holding that the trial court's determination to give credence to one version of events over a conflicting version was not arbitrary, but instead "a responsible performance of [the] duty as the trier of fact to determine the credibility of witnesses"). Furthermore, as stated above, we will neither reweigh the evidence nor judge the credibility of witnesses. B.R., 823 N.E.2d at 306. As a result, we conclude that the evidence was sufficient to support A.A.R., Jr.'s, delinquency adjudication.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.